

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AHMED ASHOUR, JOY BROWN, and
CRYSTAL TOWNES, individually and on behalf
of all others similarly situated,

Plaintiff,

-against-

ARIZONA BEVERAGES USA LLC,
HORNELL BREWING CO., INC., BEVERAGE
MARKETING USA, INC., ARIZONA
BEVERAGES HOLDINGS LLC, and
ARIZONA BEVERAGES HOLDINGS 2 LLC,

Defendants.

ANALISA TORRES, District Judge:

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19 Civ. 7081 (AT)

ORDER


Plaintiffs Ahmed Ashour, Joy Brown, and Crystal Townes bring this putative class action against Defendants Arizona Beverages USA LLC, Hornell Brewing Co., Inc., Beverage Marketing USA, Inc., Arizona Beverages Holdings LLC, and Arizona Beverages Holdings 2 LLC, alleging that Defendants use unfair and deceptive practices in advertising and marketing their beverages by failing to disclose that they contain preservatives. Second Am. Compl. ¶¶ 1–10, ECF No. 118. Plaintiffs assert, *inter alia*, claims under California and New York law for false advertising, breach of express warranty, and unjust enrichment in connection with Defendants’ sale of their beverages. *Id.* ¶¶ 65–129.

Defendants move to dismiss the second amended complaint for failure to state a claim under Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 9(b). ECF Nos. 132, 132-9 at 1–4. Defendants’ motion is GRANTED as to (1) Plaintiffs’ breach of express warranty claim under New York law, because Plaintiffs did not plead privity, a requirement for that cause of action, *Koenig v. Boulder Brands*, 995 F. Supp. 2d 274, 290 (S.D.N.Y. 2014), and (2) the Federal Rule of Civil Procedure 23(b)(2) injunctive relief claim which was inadvertently included in the second amended complaint, *see* ECF No. 136 at 11 n.10. Those claims are, therefore, DISMISSED. The motion to dismiss is otherwise DENIED because Plaintiffs have plausibly pleaded the remaining causes of action. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In due course, the Court shall issue a memorandum opinion addressing Defendants’ motion.

The Clerk of Court is directed to terminate the motion at ECF No. 132.

SO ORDERED.

Dated: March 31, 2022
New York, New York


ANALISA TORRES
United States District Judge